

No. 11(112)-3Lab-78/6215.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workmen and the management of M/s. Nandny Textiles, Faridabad.

BEFORE SHRI NATHU RAM SHARMA,
PRESIDING OFFICER, INDUSTRIAL
TRIBUNAL, HARYANA,
FARIDABAD

Reference No. 65 of 1975

between

THE WORKMEN AND THE MANAGEMENT OF M/S. NANDNY TEXTILES,
FARIDABAD.

Present:

Shri Jawahar Lal, for Shri Ram
Murti Sharma, for the workmen.

Shri R. C. Sharma, for the management

AWARD

By order No. ID/FD/75/15849, dated 14th March, 1975, the Governor of Haryana, referred the following disputes between the management of M/s Nandny Textiles, Faridabad and its workman to this Tribunal for adjudication, in exercise of the powers conferred by clause (d) sub-section (1) of section 10 of the Industrial Disputes Act, 1947:—

- (1) Whether the workmen are entitled to the grant of dearness allowance? If so, with what details?
- (2) Whether the grades and scales of pay of workers should be fixed? If so, with what details?
- (3) Whether the workmen are entitled to bonus at a rate higher than 8.33 per cent of the wages for the year 1973-74? If so, with what details?

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, the following issues were framed on 22nd January, 1976:—

- (1) Whether the demand leading to this reference has been as-poused by a substantial number of workmen?
- (2) Whether the demand relating to dispute No. 1 in respect of grant of dearness allowance to the workman is barred on principle of res judicata?
- (3) Whether the workmen are entitled to the grant of dearness allowance? If so, with what details?
- (4) Whether the grades and scales of pay of workers should be fixed? If so, with what details?
- (5) Whether the workmen are entitled to bonus at a rate higher than 8.33 per cent of the wages for the year 1973-74? If so, with what details?

The case was fixed for the evidence of the workmen and issues Nos. 1 and 2 were treated preliminary. The workmen examined Shri Nazir Mohd., President of Textiles Mazdoor Union as W W 1 who deposed in favour of disposal that they held a meeting in which demands were passed but he had not brought any union record. Therefore, his cross-examination was deferred. Thereafter the representative for the workman obtained about 10711 adjournments covering a period of about one year but never the evidence of the workman was present. The representative for the workman obtained adjournment on one or the other reasons, although the case not about three years old. Sometimes the representative for the workmen went out and sometimes on another reasons, case was adjourned for the evidence

of the workmen. Finally on 31st May, 1973, neither the workman appeared nor their representative appeared. One Shri Jawahar Lal appeared for the representative for the workmen but he had no letter of authority from the workmen. The history of the case shows that the workmen never pursued this case with interest, as a result whereof the case lingered on for three years, even the workmen could not close their case on preliminary issues after the lapse of three years. On 31st May, 1978, there was no ground to further adjourn the case. The circumstances warranted dismissal and default. I, therefore, decide issue No. 1 against the workman.

ISSUE NO. 2

The onus of issue No. 2 was on the management. They had not yet begun their case as the workman could not close their case on preliminary issues, is a result of my findings on issue No. 1 in absence of evidence, I answer the reference and give my award that the workmen are not entitled to any of the demands raised by them.

- (1) The workmen are not entitled to the grant of D.A. No details are necessary.
- (2) There is no case for fixation of grades and scales of pay of the workers.
- (3) The workmen are not entitled to bonus at a rate higher than 8.33 per cent of the wages for the year 1973-74. No details are necessary.

Dated the 6th June, 1978.

NATHU RAM SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 493, dated the 7th June, 1978.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour

and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

Dated the 7th June, 1978.

NATHU RAM SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 11(112)-3Lab-78/6230.—In pursuance of the provisions of section 17 of the Industrial Disputes Act 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workmen and the management of M/s. Gurgaon Central Co-operative Bank Ltd., Gurgaon.

BEFORE SHRI MOHAN LAL JAIN,
PRESIDING OFFICER,
LABOUR COURT,
HARYANA,
ROHTAK

Reference No. 55 of 1977
Between

SHRI PARKASH, WORKMAN, C/O
SHRI S. K. YADAV, LABOUR LAW
ADVISER, 68-L, NEW COLONY,
GURGAON AND THE MANAGEMENT
OF THE GURGAON CENTRAL CO-
OPERATIVE BANK LTD., GURGAON

Shri S. K. Yadav, for the workman.

Shri S. L. Gupta, for the management.
AWARD

By order No. ID/GG/228/77/22843, dated 10th June, 1977, the Governor of Haryana referred the following dispute between the management of the Gurgaon Central Co-operative Bank Ltd., Gurgaon and its workman Shri Parkash to this court for adjudication in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :—

Whether the termination of services of Shri Parkash was

justified and in order ? If not to what relief is he entitled ?

This award shall dispose off reference No. 55 of 1977, between Shri Parkash C/o Shri S. K. Yadav, Labour Law Adviser, 68-L New Colony, Gurgaon and the management of M/s. Gurgaon Central Co-operative Bank Ltd., Gurgaon, reference No. 56 of 1977 between Shri Rajinder Singh, C/o Shri S. K. Yadav Labour Law Adviser, 68-L, New Colony, Gurgaon and the management of M/s. The Gurgaon Central Co-operative Bank Ltd., Gurgaon and reference No. 57 of 1977 between Shri Som Dutt C/o Shri S. K. Yadav, Labour Law, Adviser, 68-L New Colony, Gurgaon and the management of M/s. Gurgaon Central Co-operative Bank Ltd., Gurgaon, all consolidated together with consent of the parties,—*vide* my order, dated 15th November, 1977, on the ground that common question of fact and law were involved therein.

The parties put in their appearance in this Court in response to the usual notices of reference sent to them, and filed their pleadings.

Each workman alleged,—*vide* claim statement filed by him in conformity with the notice of demand, dated 23rd May, 1977, served on the management leading to this reference that the latter terminated his services illegally on 3rd March, 1976 without giving him proper opportunity to submit his explanation and without serving any charge-sheet on him and without holding any enquiry and he was entitled to reinstatement with continuity of service and full back wages.

The management concerned resisted the demand of the workman concerned on the legal objection that it was highly belated and the reference made by the appropriate Government 15 months after the date of termination of his services was bad in law and that it could not be proceeded with for the reasons that the workman had himself withdrawn the writ petition on 19th April, 1976, filed by him in the Punjab and Haryana High Court assailing the orders of termination

of his services without reserving any right to raise an Industrial Dispute and that the appeal filed by him before the Registrar Co-operative Societies, Haryana, Chandigarh was yet pending and that he failed to raise a demand on them directly before approaching the Conciliation Officer. On facts, the management admitted the allegations of the workman that they terminated his services on 3rd March, 1976. They, however, explained that the workman concerned was appointed in June 1973 as temporary clerk purely on *ad hoc* basis with a condition that his services could be terminated without any prior notice to him and without assigning any reason and that he was allowed to continue as such beyond 30th December, 1974,—*vide* resolution of the Board of Directors of that date confirming the decision of the Administrative Committee and that he having failed to apply for the post of a clerk duly advertised by them under rules of common cadre he had to be relieved of his duties on the selection of other hands found duly qualified for that job. They pleaded that the workman remained gainfully employed during the period from the date of termination of his services till date and that he was not entitled to any relief.

The workman while admitting that he had filed a Writ petition in the Hon'ble Punjab and Haryana High Court against the orders of termination of his services and withdrew the same for availing an opportunity for filing an appeal under common cadre rules, before the Registrar, Co-operative Societies, Haryana and the appeal was yet pending decision controverted other legal objections of the management concerned,—*vide* rejoinder filed by him. On facts the workman admitted that he had been appointed initially in June 1973, purely on *ad hoc* basis and that he was allowed to continue in service beyond 30th December, 1974. He, however, stated that his continuance in service beyond 30th December, 1974 amounted to his regular selection on a permanent job after he had been duly interviewed by competent authority and that the Selection Committee passed no resolution

terminating his services and the orders of termination of his services were made illegally only by the Manager who was not competent to do so. He while admitting that he did not apply for the post of a clerk in response to the advertisement made by the bank on 21st December, 1975, pleaded that he considered himself to have been duly confirmed under the common cadre rules and that he was as such under no obligation to apply for the post in response to the advertisement. He thus set up a plea that the order of termination of his services was illegal, void and unenforceable. He denied the allegations that he remained gainfully employed.

The following issues were thus framed by me on pleas of the parties,—*vide* order, dated 15th November, 1977:—

- (1) Whether the reference is bad in law on the ground as mentioned in the preliminary objection of the written statement filed by the management concerned ?
- (2) Whether the workman concerned was appointed as a temporary clerk on purely *ad hoc* basis ?
- (3) If yes whether the termination of services of Shri Parkash was justified and in order ? If not to what relief is he entitled ?
- (4) Whether the workman was remained gainfully employed after termination of his services ? If yes, to what effect ?

I have heard learned authorised representatives of the parties at some length with reference to the evidence led by them and seen the records. I decide the issues as under :—

ISSUE No. 1:

The pleas giving rise to this issue being not pressed by the management concerned, the same is decided against them.

ISSUES NOS. 2 & 3 :

These are important issues in the case and being interconnected shall be disposed of and decided by me together. I am thus called upon to examine and find out, if the workman concerned was appointed as a temporary clerk purely on *ad hoc* basis initially and continued to work as such till the date of termination of his services or that he shall be deemed to have been confirmed under common cadre rules copy, Exhibit W-1.

Whereas the workman Shri Rajinder Singh and the workman Shri Parkash appearing as his own witness set up a plea that he duly applied for the post of a clerk in response to the advertisement, dated 25th September, 1973, copy, Exhibit W-2 and advertisement; dated 5th January, 1974, copy, Exhibit W-1, duly published in the daily Mewat, and was duly interviewed for the same and received no intimation from the management about the result of the interview, the management while admitting having advertised the posts of clerks on 25th September, 1973 and 5th January, 1974, stoutly denied the allegations that the workman applied for the job of a clerk under any of the aforesaid advertisements. I have carefully considered the controversy between the parties with reference to the evidence on record. I do not find any plea either in the claim statement or in the rejoinder on behalf of the workman in this direction and such an omission well justifies a finding that the plea taken by him at the late stage on 20th March, 1978, for the first time without having made mentioned thereof in the pleading at an earlier stage is an after thought and liable to be rejected on this short ground. Even otherwise, Shri Rajinder Singh, and Shri Parkash workmen admitted that he did not remember the date of his being interviewed by the bank in response to his application submitted by him in response to the advertisement copy, Exhibit W-1 and that he never made any representation either verbal or in written to the bank authorities regarding their failure to intimate to him the result of the interview. None of these workmen admittedly brought on record a copy of

any application allegedly made by him to the authorities in response to the advertisement. None of them could in fact support the aforesaid belated plea by any documentary evidence consisting of the postal receipt, etc., relating to the registered envelope sent by him to the bank with an application and considered from any angle the oral statement of the workman is highly insufficient to lead me to place reliance on the same. I am thus constrained to hold that none of the workmen concerned made any application to the bank in response to the advertisement copies, Exhibit W-2 and W-1 and the question of his being interviewed for his absorption on the job held by him permanently did not arise.

In view of the admitted facts, that the workmen were appointed initially purely on *ad hoc* basis in June 1973,—*vide* resolutions, Exhibit M-1 to M-3 and orders M-4 to M-6 and were allowed to continue as such beyond 30th December, 1974,—*vide* resolution of the Administrative Committee of that date copy, Exhibit M-7 duly confirmed,—*vide* resolution of the Board of Directors copy, Exhibit M-8, they shall be deemed to have worked as such purely as temporary hands on *ad hoc* basis till 21st December, 1975, when a formal advertisement calling for applications for the jobs of the clerks was published in the National Herald, copy, Exhibit M-9 and final selection of candidates of these jobs was made,—*vide* resolution No. 1, dated 3rd February, 1976 copy, Exhibit M-10. In absence of any evidence for the workman on record in support of their plea, it cannot be said by any stretch of imagination that any of them was confirmed on the job of a clerk held by him on temporary and *ad hoc* basis and the mere circumstance that he continued to work as a clerk from June 1973 to 3rd February, 1976 without break and without being asked by the management concerned to leave the job does not legally render his assignment of a permanent nature giving him protection from removal from service under the conditions of his initial appointment. I, as such hold that each workman was appointed as temporary purely on *ad hoc*

basis in June 1973 and continued to work as such till 3rd February, 1976, when he was asked to be relieved from service as a result of his failure to apply for the job in response to the advertisement, dated 21st December, 1975, copy, Exhibit M-9 and his being not possessed of requisite qualification for that job advertised by the management subsequent to his initial appointment.

This now brings me to the determination of the scope and interpretation of the common cadre rules copy, Exhibit W-1 so strongly relied on by the workman concerned in support of the plea of his being duly confirmed. It is undisputed on both sides that the rules came into force on 3rd March, 1975 and are applicable to all employees of Haryana State Central Co-operative Banks. Shri S. K. Yadav, learned authorised representative of the workman concerned referred me to rules 9.4, 33.I and 36.ii which read as under :—

9.4.—*Appointment by direct recruitment :*

Except the case of, *ad hoc* appointments where the period shall not exceed 6 months and where the number of such appointments shall not exceed 5 per cent of the sanctioned strength of that category of the post. : * * *

33.1—

The appointing authority may terminate the services of a temporary employee by giving one month's notice or salary in lieu, thereof without assigning any reason, if he is in the service continuously for a period of more than 3 months. Provided that an employee shall be entitled to 7 days, notice or salary in lieu, thereof, if he is in the service continuously for a period of three months or less.

36.ii—

Temporary employees engaged for an indefinite period shall be entitled to one month's pay and allowances on termination of service. To the temporary person engaged for a specified period/work mentioned in their appointment letters, no compensation shall be payable.

Shri S. K. Yadav contended with reference to rule 9.4 reproduced above that each one of the workmen shall be deemed to have been confirmed after the expiry of six months of his service and that *ad hoc* appointments could not legally exceed that period. This argument has been duly considered by me and has to be rejected for the reasons that the *ad hoc* appointments cannot be made for a period exceeding six months, after coming into force of the rules on 3rd March, 1975 and rule 9.4 does not govern the *ad hoc* appointments made before 3rd March, 1975, the date of coming into force of the rules. Even assuming that rule 9.4 applied even to *ad hoc* appointments made before 3rd March, 1975 it has no effect of rendering the services of such employees permanent and their services shall be deemed to have come to an end on the expiry of six months from the date of their initial appointment rendering the subsequent period of their service illegal. Rule 9.4 at any rate cannot be interpreted so as to render the services of *ad hoc* employees permanent on the expiry of a period of six months from the date of their initial appointment.

The right of a temporary employee of one month's notice or salary in lieu, thereof in case of termination of his service of more than three months provided under rule 33 again does not render the employee confirmed as a result of the failure of the management to serve him such notice or pay him one month's salary and his only remedy would as a result of such a failure be to bring an action for recovery of the same. Even this rule has thus no application to the case and does not justify a finding of confirmation of the workman concerned.

The right of a temporary employee, engaged for indefinite period to one month's pay and allowances on termination of his services as provided in rule 36.ii reproduced above does not legally render his service permanent in case of the failure of the management to pay him such allowances before ordering termination of his services and his remedy is only by way of recovery of such pay and

allowances. Even this rule has thus no application to the facts of the case.

The resolution copy, Exhibit M-10 directing that the workman concerned be relieved being that of the Administrator of the Gurgaon Central Co-operative Bank, Ltd., Gurgaon, it cannot be said that the services of the workman concerned were terminated only by the Manager. The orders issued by the Manager in implementation of this resolution adopted by a competent authority cannot be said to be illegal and considered from any angle the termination of services of the workman concerned under the terms and conditions of his appointment initially made.—*vide* resolution M-1 to M-3 was perfectly justified and he is not entitled to any relief. I thus hold and decide this issue accordingly.

ISSUE No. 4:

In absence of any evidence of the management on record in support of this issue the same is decided against them.

I, accordingly answer the reference while returning the award in terms of my findings on issues Nos. 2 and 3.

Dated the 9th June, 1978.

MOHAN LAL JAIN,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 1634. dated 20th June, 1978.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

MOHAN LAL JAIN,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 11(112)-3Lab-78/6231.—In pursuance of the provision of section 17 of the Industrial Dispute Act, 1947 (Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the

Presiding Officer, Labour Court, Rohtak. In respect of the dispute between the workmen and the management of M/s American Universal Electric (India) Ltd., Faridabad.

BEFORE SHRI MOHAN LAL JAIN,
PRESIDING OFFICER LABOUR
COURT, HARYANA, ROHTAK.

Reference No. 40 of 1977

between

SHRI UMA SHANKAR TRIPATHI
WORKMAN, C/O COM. MOHAN LAL
KUSHAV, 2/21, GOPI COLONY, OLD
FARIDABAD. AND THE MANAGE-
MENT OF M/S. AMERICAN UNIVER-
SAL ELECTRIC (INDIA) LTD., FARI-
DABAD.

Present:

Nemo for the workman.

Shri R. N. Rai, for the management.

AWARD

By order No. ID/FD/868/20-77/21976, dated 4th June, 1977, the Governor of Haryana referred the following dispute between the management of M/s. American Universal Electric (India) Ltd., Faridabad and its workman Shri Uma Shankar Tripathi, to this Court for adjudication, in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947:

"Whether the termination of services of Shri Uma Shankar Tripathi was justified and in order? If not, to what relief is he entitled?"

The parties put in their appearance in this Court in response to the usual notices of reference sent to them and filed their pleadings.

The workman alleged,—*vide* claim statement dated 19th July, 1977, filed by him, that the management concerned did not give any reply of the notice of demand

dated 5th January, 1977, served by him on the management concerned with an averment that they obtained a resignation from him on 20th December, 1976, under coercion by way of threatening him to end his life if he did not agree supply the same to them and that they actually brandished a knife for that end, in view. He stated that the failure of the management concerned to reply the notice of demand amounted to their acceptance of the pleas mentioned therein and that their refusal to take him on work since 20th December, 1976, amounted to illegal termination of his services and that he was thus entitled to reinstatement with continuity of service and full back wages.

The management concerned denied the allegations of the workman that they obtained his resignation under coercion under the circumstances mentioned in the notice of demand and pleaded that he submitted his resignation on 20th December, 1976, voluntarily of his own accord without any threat inducement or coercion being exercised on him and that the same was duly accepted and the order of acceptance of the resignation was intimated to him the same day and that he received a sum of Rs 593.84 in full and final settlement of all his claims. They further set up a plea that the workman having duly resigned his job, the reference made in respect of the justification of termination of his services, was bad in law and was liable to be quashed on that ground. They denied the allegations of the workman that they victimised him for his trade union activities and gave out that he was never a member of any union much less an active office bearer thereof.

The workman reiterated the allegations made by him in the notice of demand dated 5th January, 1977 and in the statement of claim and controverted the pleas of the management,—*vide* rejoinder filed by him. He specifically stated in the rejoinder, that the management arranged to forcibly bodily take him in the office on 20th December, 1976 and Sarvshri S. D. Sharma, Time Keeper and B. R. Yadav, Assistant Personnel Officer and one Shri V. P. Rayyat obtained his signatures on

three blank papers under threat of dire consequences with a show of knife if he did not sign the same. He, further averred that he lodged a report in police station section 15 relating to the aforesaid facts and that the case put forth by him was found duly established by the police as a result of the investigation made by them. He reiterated that he was an active worker of the union of the workmen of the management concerned.

The following issues were thus framed by me on pleas of the parties,—*vide* order dated 24th October, 1977:

- (1) Whether the workman resigned his job on 20th December, 1976. —*vide* resignation duly accepted by the management with the orders of acceptance of the resignation intimated to the former the same day?
- (2) Whether the workman received Rs. 593.84 from the management in full and final settlement of all his claims in pursuance of the acceptance of his resignation?
- (3) In case of proof of issues Nos. 1 and 2 whether the reference is bad in law?
- (4) In case of non-proof of issues Nos. 1 and 2 whether the termination of services of Shri Uma Shankar Tripathi was justified and in order? If not to what relief he is entitled?

I have heard Shri R. N. Ray authorised representative of the management concerned ex-parte after the workman chose to absent himself on 13th June, 1978 fixed for recording of his rebuttal of the evidence led by the management resulting in ex-parte proceedings against him. I have seen the records and decide the issues as under:—

ISSUE NOS. 1 AND 2:

These issues being inter connected shall be disposed of and decided by me

together. The management concerned in order to prove these issues examined Shri B. K. Gupta their Manager manufacturing MW-1 Shri M. S. Hudda their Factory Manager MW-2, Shri B. R. Yadav the then their Assistant Personnel Officer MW-3, Shri Raj Kumar the then their Supervisor MW-4 and Shri S. D. Sharma their Head Time Keeper MW-5.

Shri Raj Kumar, Foreman M/s. Es-corts, Ltd., Faridabad, deposed that the workman concerned personally brought the resignation Ex. M-1 to him in his office on 20th December, 1976, when he was in the employment of the management concerned as a Supervisor and told him that he wanted to leave his job for domestic reasons and that he forwarded the resignation to the Assistant Manager, —*vide* his endorsement Ex. M-1/C made by him in his own handwriting and under his own signatures. He specifically stated that he did not exercise any pressure mental or physical on the workman. He gave out that he happened to meet the workman once or twice even after 20th December, 1976, and he (workman) never expressed to him that he submitted the resignation under pressure. Shri B. K. Gupta, testified that on receipt of resignation Ex. M-1 of the workman concerned from the Assistant Manager,—*vide* endorsement Ex. M-1/B of Shri V. P. Rayyat the then Assistant Manager manufacturing, he sent the same to the personnel department,—*vide* his endorsement Ex. M-1-A recommending its acceptance with the words "O.K.". He added that Shri V. P. Rayyat had resigned his job and joined services in the middle-east. Shri M. S. Hudda, Factory Manager stated that he accepted the resignation Ex. M-1,—*vide* his endorsement Ex. M-1/D made by him in his own handwriting and under his signatures and that the management intimated to the workman the fact of the acceptance of the resignation,—*vide* letter copy Ex. M-2 sent to him through a special messenger the same day and that copy Ex. M-2 bore his signatures in token of his having received the original. He added that the workman received a sum of Rs. 583-84,—*vide* receipt Exhibit M-3 in full and final settlement of all his claims, on 20th December, 1976, after he had

authorised this payment,—*vide* endorsement Ex. M-3/1. Shri B. R. Yadav the then Assistant Personnel Officer of the management concerned affirmed that he personally handed over the letter dated 20th December, 1976, copy Ex. M-2 intimating him the factum of the acceptance of his resignation, to the workman and obtained his signatures Ex. M-2/1 on the aforesaid copy in token of receipt by the latter of the original. He added that he never exercised any coercion threat or pressure on the workman concerned in obtaining resignation Ex. M-1 from him and that he never brandished any knife in order to threaten him for that purpose. Shri S. D. Sharma gave out that on receipt of the resignation Ex. M-1 after it had been accepted by the Factory Manager, he made a payment of Rs. 593.84 to the workman concerned,—*vide* receipt Ex. M-3 duly signed by him in his presence at mark A, and that he never showed any knife to him. This is all the evidence documentary and oral led by the management in support of their case.

Nothing could be brought in cross-examination of any of the aforesaid witnesses leading me to suspect their statements and a mere suggestion made by the workman in cross-examination of each one of the witnesses in support of his plea without eliciting anything material from him, did not legally render his evidence unreliable. Above all the aforesaid documentary and oral authentic and trustworthy evidence led by the management remained un rebutted, as the workman chose to absent himself on 13th April, 1978 the date of hearing fixed for recording his rebuttal, as already noticed. The absence of the workman on 13th June, 1973, in the circumstances of the case, well led to a conclusion of the hollowness of his pleas and to a further inference that the case set up by him was false, fabricated and concocted. I cannot otherwise think of any reason for disbelieving the evidence of any of the witnesses examined by the management and in view of the circumstances that their evidence has remained un rebutted and unassailed place full reliance on the same. The heavy burden which shifts on the workman to establish

his pleas, of the management obtaining his resignation under co-ercion remained undischarged.

I, thus for the reasons aforesaid while placing full reliance on the evidence documentary and oral led by the management hold and decide these issues in favour of the management.

ISSUE NO. 3:

In view of my findings in issues Nos. 1 and 2, the reference made in respect of the justification of the termination of services of the workman is obviously bad in law and is liable to be quashed on this ground alone.

ISSUE NO. 4:

In view of my findings on issues Nos. 1, 2 and 3 the workman is obviously not entitled to any relief. I, decide this issue accordingly and answer the reference while returning the award in terms of my findings made on issues Nos. 1 2 and 3.

Dated the 15th June, 1978.

MOHAN LAL JAIN,
Presiding Officer,
Labour Court, Haryana.
Rohtak.

No. 1633, dated 20th June, 1978.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

Dated the 15th June, 1978.

MOHAN LAL JAIN,
Presiding Officer,
Labour Court, Haryana.
Rohtak.

No. 11(112)-3Lab-78/6347.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak.

In respect of the dispute between the workmen and the management of M/s. S. K. Metal Industries, Hanuman Gate, Jagadhri:—

BEFORE SHRI MOHAN LAL JAIN,
PRESIDING OFFICER,
LABOUR COURT, HARYANA, ROHTAK

Reference No. 4 of 1976

between

SH. JAIPAL CHAILLA WALA C/o PT. M.S.S.
COWSHISH, LATHEMARA STREET,
JAGADHRI AND THE MANAGEMENT OF M/S.
S. K. METAL INDUSTRIES, HANUMAN GATE,
JAGADHRI.

Shri M. S. Cowshish for the workman,
Shri W. C. Sharma for the management.

AWARD

By order No. ID/AMB/459-75/3033, dated 23rd January, 1976, the Governor of Haryana referred the following dispute between the management of M/s. S. K. Metal Industries, Hanuman Gate, Jagadhri and its workman Shri Jaipal Chaila Wala to this Court for adjudication, in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947:—

Whether the termination of services of Shri Jai Pal Chaila Wala was justified and in order. If not, to what relief is he entitled ?

The parties put in their appearance in this Court in response to the usual notices of reference sent to them and filed their pleadings. The workman alleged,—vide claim statement dated 19th May, 1976; filed by him in this Court that the management concerned illegally terminated his services w.e.f. 22nd Sept., 1975, when he reported to them for duty after availing forced leave which had been duly sanctioned. He stated that he had put in about 8 years permanent service as a Scratcher with the management concerned and the latter terminated his services on feeling aggrieved of his demand of payment of bonus and earned leave wages etc. in order to victimise him and that they refused to take him on duty despite his reporting to them every day for that purpose after expiry of his leave, for a number of days.

The management concerned while admitting that the workman had been working with them intermittently since 1st April, 1971, pleaded that he submitted his resignation dated 31st March, 1975 and that he was duly relieved on that day after he was paid his dues in full and final satisfaction of his accounts and that he was re-employed w.e.f. 15th April, 1975. They set up a case that the workman remained habitually absent from duty during the period from 15th April, 1975 to 30th August, 1975, when he again absented himself on 30th August, 1975, without prior sanction of leave and turned up for resuming his duty on 22nd September, 1975, when he was asked to explain his absence from 30th August, 1975 to 22nd September, 1975 and that he submitted no explanation and on the other hand served them with a notice of demand, dated 23rd September, 1975. They further averred that the services of the workman were terminated as a result of his long continued absence from 30th August, 1975 to 21st September, 1975 and his failure to explain the reasons of that absence.

The workman controverted the pleas of the management,—vide rejoinder filed by him and gave out that the management terminated his services w.e.f. 22nd September, 1975 when he returned to resume his duty after the expiration of his leave.

The following issues were thus framed by me on pleas of the parties,—vide order dated 23rd September, 1976.

1. Whether the applicant absented himself from duty on 30th August, 1975 and continued to do so thereafter and thus abandoned his job in that manner ?
2. Whether the termination of services of Shri Jai Pal Chaila Wala was justified and in order ? If not to what relief is he entitled ?

In view of the management having terminated the services of the workman admittedly as a result of his unexplained absence from duty during the period from 31st August, 1975 to 21st September, 1975 and having not charge-sheeted him or held any enquiry against him for his habitual absence from duty prior to 31st August, 1975, the controversy between the parties as to whether the workman voluntarily resigned his job on 31st March, 1975 or not or whether he had put in continuous 8 years of service before 31st August, 1975 and whether he remained habitually absent from duty prior to 31st August, 1975

is not material and need not thus be resolved by this court in the case for the disposal of the reference.

I have heard learned authorised representatives of the parties concerned and gone through the written arguments filed on behalf of the management. I decide the issues as under :—

ISSUE No. 1

This is an important issue in the case. Reference in this connection be made to the notice of demand, dated 23rd September, 1975 Ex. W-X admittedly served by the workman on the management concerned, the statement of claim and rejoinder filed by him in order to show the inconsistent pleas taken by him from time to time. The workman for instance alleged in the notice of demand Ex. W-X that the management refused to allow him duty on 22nd September, 1975, when he reported to them for that purpose on the expiry of his leave which he had to avail on account of his sickness and heavy rains in his village causing damage to his house, under circumstances beyond his control. Such an averment in the notice of demand led to a conclusion of an express allegation that the workman got his leave sanctioned from 31st August, 1975 to 21st September, 1975. As against the aforesaid allegations found made in the notice of demand, the workman stated in the claim statement that he reported for duty on 22nd September, 1975 after availing the forced leave sanctioned by him which he had to obtain on account of physical and homely circumstances thus giving an indication, that he did not get the leave sanctioned from the management concerned and that he proceeded to his village under forced unavoidable circumstances treating the leave sanctioned. He set up a plea,—vide rejoinder filed by him that his services were terminated on 22nd September, 1975 when he returned to resume duty after the expiration of his leave meaning thereby that the leave of the period from 31st August, 1975 to 21st September, 1975 had been duly sanctioned. He admitted,—vide his statement dated 29th March, 1978 made by him as his own witness that he fell ill and did not attend his duties for 15 days during September, 1975 and that there was no practice of making application for grant of sick leave manifestly implying that he remained absent from duty from 31st August, 1975 to 21st September, 1975 without prior permission of the management concerned, I am thus satisfied on his

own showing, in agreement with the plea of the management concerned that the workman voluntarily absented himself from duty during the period from 31st August, 1975 to 21st September, 1975 without prior permission of the management and without even disclosing to them the reasons thereof.

The workman admitted receipt of letter Ex. M-1, dated 22nd September, 1975 sent to him by the management concerned asking his explanation in writing for his continued absence from duty during the period from 31st August, 1975 to 21st September, 1975;—vide acknowledgement receipt Ex. M-2. He did not admittedly give any reply of this letter to the management. The case of the management that the workman concerned failed to explain the reasons of his absence from duty during the aforesaid period is also found to have been fully established by the workman's own admission. The evidence of Sarvshri Kashmiri WW-1, Rameshwar Parshad W-2 and Mehar Chand WW-3 examined by the workman and his own statement, that he went to the factory alongwith the letter Ex. M-1 in the company of Shri Mehar Chand who asked Shri Kishan Chand partner of the management concerned to assign him duty and the later refused to do so; is obviously besides the point in controversy between the parties and can safely be said to be irrelevant to the issue under discussion and has under the circumstances to be ignored. I, thus decide this issue in favour of the management only to the extent that the workman absented himself from duty from 30th August, 1975 to 21st September, 1975 without sanction of leave, and failure to explain his absence from duty.

ISSUE No. 2.

The management concerned have admittedly no Certified Standing Orders of their own and the parties shall be deemed to have been governed by the Model Standing Orders of the Haryana Government. It has thus become necessary to state in extenso order 16 sub order 4 of the Haryana Government Model Standing Orders as under for deciding this issue:—

If the workman remains absent without sanctioned leave or beyond the period of leave originally granted or subsequently extended he shall lose his lien on his appointment unless (a) he returns within 10 days of the commencement of the absence of the expiry of the leave and

Between

(b) explains to the satisfaction of the Manager the reason of his absence or his inability to return on the expiry of the leave, as the case may be.

In view of my findings on issue No. 1 and having regard to the provisions of order 16, sub-order 4, of the Haryana Government Model Standing Orders reproduced above, the workman concerned shall be deemed to have lost his lien on his appointment as a result of his unexplained long absence from duty from 30th August, 1975 to 21st August, 1975, and the termination of his services by the management concerned under the circumstances is obviously justified and he is not entitled to any relief. I decide this issue accordingly and answer the reference while returning the award in these terms.

Dated 12th June, 1978.

MOHAN LAL JAIN,
Presiding Officer,
Labour Court, Haryana, Rohtak.

No. 1628, dated 20th June, 1978

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.
Dated 12th June, 1978.

MOHAN LAL JAIN,
Presiding Officer,
Labour Court, Haryana, Rohtak.

No. 11(112)-3Lab-78/6348.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak. In respect of the dispute between the workmen and the management of M/s. Rawal Industries (P) Ltd., 2304/11 Jhajjar Road, Bahadurgarh:—

BEFORE SHRI MOHAN LAL JAIN,
PRESIDING OFFICER,
LABOUR COURT, HARYANA
ROHTAK

Reference No. 6 of 1977

SHRI ASA RAM, WORKMAN C/O
SHRI ROSHAN LAL, SECRETARY,
OFFICE NO. 305/4 SHIVAJI COLONY,
ROHTAK AND THE MANAGEMENT
OF M/S. RAWAL INDUSTRIES (P)
LTD., 2304/11 JHAJJAR ROAD,
BAHADURGARH

Shri Dhan Singh, for the workman.

Shri D. C. Chadha, for the management.

AWARD

By order No. ID/RK/71-77/13626, dated 8th April, 1977, the Governor of Haryana referred the following dispute between the management of M/s. Rawal Industries (P) Ltd., 2304/11, Jhajjar Road, Bahadurgarh, and its workman Shri Asa Ram to this Court for adjudication, in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act :—

Whether the termination of services of Shri Asa Ram was justified and in order? If not to what relief is he entitled?

The parties put in their appearance in this Court in response to the usual notices of reference sent to them and filed their pleadings.

The workman concerned alleged in conformity with the notice of demand dated 7th January, 1977 served by him on the management concerned, that the management intentionally got him and some other workmen involved in a false police case under sections 107/151 of the Code of Criminal Procedure of feeling annoyed with them on account of their raising a demand for payment of bonus for the year 1975-76 and protesting against their being harassed, and that he as a result thereof remained in police custody during the period from 1st November, 1976 to 17th November, 1976 when he was released on bail and was not assigned any duty on his reporting to them for that purpose. He thus set up a case that

the management illegally terminated his services as a turner on wages of Rs. 275 per mensem with effect from 17th November, 1976 in the aforesaid manner and that he was entitled to reinstatement with continuity of service and full back wages.

The management concerned denied the allegations of the workman that they terminated his services and pleaded that his services on the other hand automatically came to an end on his voluntary abandonment of the job by way of willful absence from duty from 1st November, 1976 to 17th November, 1976, in contravention of their Certified Standing Orders applicable to him and that the reference was thus bad in law.

The workman reiterated the allegations made by him in the claim statement and controverted the pleas of the management.—*vide* rejoinder filed by him with the result that the following issues were thus framed by me on pleas of the parties,—*vide* order dated 8th July, 1977:—

- (1) Whether the workman himself abandoned the job by way of absenting himself from duty continuously for 8 days with effect from 1st November, 1976 and thus lost his lien on the job under the Certified Standing Orders of the management applicable to him ?
- (2) Whether the termination of services of Shri Asa Ram was justified and in order ? If not, to what relief is he entitled ?

I have heard learned authorised representatives of the parties and seen the records and gone through the written arguments filed on behalf of the parties. I decide the issues as under :—

ISSUE NO. 1:—

This is an important issue in the case. Whereas Shri Gurcharan Singh, Managing Director of the management concerned appeared as his own witness as MW-1,

the workman examined Shri Hazari Singh, Reader, Sub-Divisional Magistrate, Bahadurgarh, WW-1, Shri Chattar Bhuj, Head Constable, Police Station Rohtak, WW-2, and Shri Subhash Chander another workman of the management concerned WW-3 besides making his own statement. The facts that emerged from the evidence of the parties are that about 10 workmen including the workman concerned were taken by police Bahadurgarh in custody from the premises of the factory of the management concerned on 1st November, 1976, in a case under sections 107/151 of the Code of Criminal Procedure got registered by the management concerned the same day and the workman concerned Shri Asa Ram and other workmen remained lodged in police lock up till 17th January, 1977, when they were actually released on bail. It was admitted by Shri Gurcharan Singh that the name of the workman was struck off the rolls of the employees on 12th November, 1976 as a result of his long continued absence from duty from 1st November, 1976, till that date under their Certified Standing Orders applicable to him. Whereas the management entered into a settlement copy, Exhibit M-3 under section 12(3) of the Industrial Disputes Act with the other nine workmen agreeing to reinstate each one of them on duty with continuity of service and the later agreed to withdraw their previous demands and complaints and back wages, no settlement was ever arrived at with Shri Asa Ram workman concerned relating to the demand dated 7th December, 1976 with the result that he continued to remain out of job and he raised another demand dated 7th January, 1977, for his reinstatement with continuity of service and full back wages. The management relied on order 14 of the Certified Standing Orders Copy Exhibit M-1, reproduced as under in support of their action of striking of the name of the workman concerned from the rolls of their employees on 12th November, 1976:—

Automatic Termination of Service of Unauthorised absence:

14. If a workman is absent from work for 8 days without leave or remains

absent after the expiry of the period of leave originally granted or subsequently extended he shall lose his appointment automatically and shall be deemed to have left the services of the concern unless he returns to duty within 8 calendar days of the due date, and gives explanation in writing for his absence to the satisfaction of the management.

The sole question requiring determination in the circumstances of the case would be as to whether the workman concerned can be said to have lost his lien on the job as a result of his absence from duty from 1st November, 1976 to 12th November, 1976 and the management were justified in striking of his name from the rolls of their employees on that ground. It was specifically admitted by Shri Gurcharan Singh that the Police took away 10 workmen including the workman concerned in custody from the premises of the factory on 1st November, 1976, on his informing them about two workmen being beaten by the ten other workmen and that none of them turned up till 12th November, 1976, when he struck off their names under the Certified Standing Order number 14 stated above. According to him he did not come to know about what happened with these ten workmen after they had been taken in custody by the police from the premises of the factory till he struck off their names and that he did not receive any information from any of them in writing in that connection. The evidence of Shri Hazari Singh, Reader, Sub-Divisional Magistrate, Bahadurgarh, examined as WW-1 and that of Shri Subhash Chander, WW-3 undisputably led to a conclusion that all these persons were released on bail on 17th November, 1976 when they are alleged to have readily reported for assignment of duties to the management concerned. Can it be said under the circumstances that Shri Asa Ram, workman concerned remained absent from work for 8 days continuously and unauthorisedly. The word "Absence" has been defined in the Concise Oxford Dictionary, 5th addition as being away from a place or a person, implying volition of the person concerned of being

not present. The word "absence" has likewise been defined in the aforesaid dictionary as the practice of a worker of absenting himself from work without good reason implying the same sense. Applying the aforesaid definition and giving the words "unauthorised absence" as used in the heading of order 14 and the word absence as used in order 14 with the back ground of the heading, their natural meaning, a workman lodged in police custody to the knowledge of the management and his remaining lodged there undisputably for more than 8 days cannot by any stretch of imagination amount to his unauthorised absence from duty for the period he remained confined there. I, fully rely on the statement of the workman and Subhash Chander, WW-3 and hold that he reported himself for assignment of duties to the management concerned on 18th November, 1976, immediately after his release from custody on bail and his absence from duty during the period from 1st November, 1976 to 17th November, 1976, was for reasons beyond his control to the knowledge of the management. He cannot, therefore, be said to have violated the provisions of order 14 of the Certified Standing Orders. Copy Exhibit M-1 reproduced above.

Above all the allegations of the workman concerned in respect of his victimisation by the management on grounds of his trade union activities and his raising a demand for payment of bonus and his making a complaint against their misbehaviour are found established by the following facts :—

- (a) The workman admittedly made a complaint to the Factory Manager as far back as on 23rd October, 1976 attached as Annexure A to the written statement only a week before their being taken into custody by the police that the management indulged in unfair labour practice of taking their thumb impressions on blank papers and implicating them in false cases and engaging 'Gundas'

to deal with their leaders and delaying payment of bonus.

- (b) The workman admittedly demanded payment of bonus for the year 1975-76,—*vide* letter attached as Annexure "C" to the written statement, sent to the Factory Manager.

- (c) The admission made by Shri Gurcharan Singh that Shri Om Parkash, workman, alleged to have been beaten by the ten workmen taken into custody was employed by him on 26th October, 1976, and the other such workman Shri Jai Bhagwan was employed by him on 1st November, 1976, and another workman named Om Parkash was employed by him in October 1976, and that he had received the notice of demand, dated 24th October, 1976. I, therefore, believe that Sarvshri Om Parkash, Om Parkash and Jai Bhagwan were employed by the Management few days before 1st November, 1976, for creating trouble and cook up a story that they were beaten by other 10 workmen. It is significant to note in this connection that nothing came out finally as a result of the registration of the case against 10 workmen alleged to have belaboured Om Parkash and Jai Bhagwan and the irresistible conclusion is that the management put forth a cock and bull story for implicating 10 workmen in a false case only in order to terminate their services on a false plea of their absence from duty for more than 8 days.

- (d) The admitted fact that whereas the management entered into a settlement, Exhibit M-3 with the other nine workmen agreeing to reinstate them on duty with continuity of service, they

failed to reinstate Shri Asa Ram. It cannot be imagined and believed that Shri Asa Ram was not prepared to be a party to the settlement.

- (e) The strange coincidence that the 10 workmen were released on bail only on 17th November, 1976, not only during the first 8 days of their custody but even after the expiry of further 8 days when they had even no chance to submit their explanation under order 14 of the Certified Standing Orders, reproduced above.

I, am thus convinced as a result of the cumulative effect of all the aforesaid circumstances, that Shri Gurcharan Singh, MW-1, firstly got a trouble created inside the premises of the factory on 1st November, 1976, intentionally with the aid and connivance of Sarvshri Om Parkash and Jai Bhagwan employed by him a few days before for that purpose to give the whole affair a show of violence at the instance of 10 other workmen including Shri Asa Ram for getting them involved in a readymade easy case under sections 107/151 Cr.P.C. and that he some how further arranged and manoeuvred to keep them in custody for 17 days till after the expiry of the period during which they could submit their explanation. There is, therefore, little doubt in my mind that this was all done by Shri Gurcharan Singh in order to terminate the services of Shri Asa Ram and some other workmen and whereas he cooled down subsequently in case of the other nine workmen, he remained warned up and agitated against Shri Asa Ram till the last and that all his actions directed against him were mala fide.

The management relied on authorities reported as 1963 II LLJ 638 (Supreme Court) between Buckingham and Carnatic Co. Ltd., and Venkatayya and another 1969 I LLJ 133 between Pure Kustore Colliery and Khan Mazdoor Congress (by General Secretary) and others and 1967 II LLJ 883 Supreme

Court between National Engineering Industries Ltd., Jaipur and Hanuman in support of their justification of striking of the name of Shri Asa Ram workman concerned from the rolls of their employees under the Certified Standing Orders. I have carefully gone through all these authorities 1963 II LLJ 638 was a case wherein a workman went on leave and subsequently remained absent for about 52 days and the medical certificate relating to his illness produced by him from a Doctor was not accepted by the management on the ground that the Senior Medical Officer did not confirm it and no *mala fides* were alleged against the management for refusing to accept the medical certificate. In 1969 I LLJ 133 the workman overstayed the leave and failed to return within 8 days of the expiry of the same and give an explanation of his inability to return resulting in the loss of the lien of his job under the Certified Standing Orders. Even in 1967 II LLJ, 883 the workman overstayed the period of his leave and failed to return within 8 days for explaining his over stay.

It would appear that all the aforesaid cases related to facts quite different from the facts of the case under decision, wherein there are not only allegations of *mala fides*, unfair labour practice and victimisation on the part of the management but the same are found well established and the workman concerned was taken into custody by the police on 1st November, 1976 to the knowledge of the management and the later did not, admittedly care to enquire about the result of the case till 17th November, 1976 when he was released and there are findings of fact that all this was done at their instance with the intention of terminating his services. I, thus hold that the none of the authorities has any application to the facts of the case in hand. The other authorities reported as Delhi Cloth and General Mills Ltd. vs. Shambhu Nath Mukharjee and others Supreme Court case page 1 holding that the workman was not proved to be absent for more than 8 days and Burn and Co. Calcutta vs. their employees II-F.J.R.-217 referred to in the written

argument submitted by the management relating to the necessity of framing a charge are also besides the point in issue and have no direct applicability to the facts of the case. I, thus decide this issue against the management.

ISSUE No. 2:

In view of my findings on issue No. 1, the management shall be deemed to have terminated the services of the workman concerned illegally and such a termination is unjustified and the later is entitled to reinstatement with continuity of service and full back wages I, hold accordingly and answer the reference while returning the ward in these terms:

Dated the 12th June, 1978.

MOHAN LAL JAIN,

Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 1629, dated 20th June, 1978.

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments, Haryana, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

MOHAN LAL JAIN,

Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 11(112)-3Lab-78/6348A.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court Rohtak, in respect of the dispute between the workmen and the management of M/s. High Polymers Private Limited N.I.T., Faridabad.

BEFORE SHRI MOHAN LAL JAIN,
PRESIDING OFFICER,
LABOUR COURT,
HARYANA,
ROHTAK

Reference No. 27 of 1977

between

SHRI DHANPAL SINGH AND OTHERS
WORKMEN C/O CHEMICAL INDUS-
TRIES EMPLOYEES UNION REGD.
OPP. GOVT. GIRLS MIDDLE SCHOOL
NO. 1, N.I.T., FARIDABAD AND THE
MANAGEMENT OF M/S. HIGH
POLYMERS PRIVATE LIMITED N.I.T.,
FARIDABAD

Present.

Memo for the workmen.

Shri R. C. Sharma, for the
management.

AWARD

By order No. ID/FD/555-A-76/21940, dated the 4th June, 1977, the Governor of Haryana referred the following dispute between the management of M/s. High Polymers Private Limited N.I.T., Faridabad and its workman Shri Dhanpal Singh and others to this court for adjudication, in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act :—

Whether the retrenchment of the workmen mentioned in the list enclosed was justified and in order? If not, to what relief are they entitled?

The parties put in their appearance in this Court in response to the usual notices of reference sent to them.

The workmen filed the statement of their claim and raised objections relating to the incompetency of Shri R. C. Sharma to represent the management concerned.

The management in turn raised objections relating to the incompetency of Shri Amar Singh Sharma to represent the workmen concerned. The following preliminary issues arising from these objections were framed by me,—*vide* order dated 8th August, 1977:—

1. Whether Shri R. C. Sharma and Shri A. S. Sharma are legally competent and duly authorised to represent the management in this reference?
2. Whether Shri Amar Singh Sharma is legally competent and duly authorised to represent the workmen in this reference?

The management led evidence in support of issue No. 1 and the case was fixed for recording the evidence of the workmen on issue No. 2 and their rebuttal on issue No. 1 for 12th April, 1978 when neither any of them or his authorised representative put in his appearance with the result that ex-parte proceedings were taken up against them. On consideration of the evidence led by the management and in absence of any evidence for the workmen, both the preliminary issues were decided in favour of the management,—*vide* order dated 12th April, 1978.

As regards merits of the case I have carefully gone through the notice of demand dated 12th June, 1976 enclosed with the reference and find that the workmen concerned had specifically stated therein that the management concerned illegally and wrongfully locked them out with effect from 5th March, 1976 and they were entitled to be reinstated with continuity of service and full back wages. No allegation is found made by any of them in the notice of demand that he was retrenched from service or that his services were terminated by the management concerned.

The reference made for adjudication by this court in respect of the justifiability of their retrenchment of the workmen concerned, in absence of such a

demand and inview of a specific allegation made in the demand raised by them on the management that they were locked out is obviously illegal and liable to be quashed on this short ground. I, thus hold that the reference made is inconsistent with the demand raised by the workman and is, therefore, illegal and none of the workmen is entitled to any relief. I, in consequence answer the reference while returning the award in these terms.

Dated the 15th June, 1978.

MOHAN LAL JAIN,
Presiding Officer
Labour Court, Haryana,
Rohtak.

No. 1630, dated 20th June, 1978.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

MOHAN LAL JAIN,
Presiding Officer
Labour Court, Haryana,
Rohtak.

LIST

1. Shri Dhan Pal Singh.
2. Shri Kishan Pal.
3. Shri Radhey Singh.
4. Shri Narinder Pal.
5. Shri Rama Shankar.
6. Shri Ravish Narain.

Dated the 15th June, 1978.

MOHAN LAL JAIN,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 11(112)-3 Lab.-78/6350.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court Rohtak in respect of the dispute between the workman and the management of M/s. Dharampal Chadda and Sons G. T. Road, Bahalgarh (Sonapat).

BEFORE SHRI MOHAN LAL JAIN,
PRESIDING OFFICER,
LABOUR COURT,
HARYANA, ROHTAK

Reference No. 97 of 1976

between

SHRI CHARANPAL SINGH, WORK-
MAN C/O GENERAL WORKERS,
UNION OPP. AGGARWAL DHARAM-
SHALA, SONEPAT AND THE MANAGE-
MENT OF M/S. DHARAMPAL CHADDA
AND SONS, G. T. ROAD, BAHALGARH
(SONEPAT)

Present:

Shri M. S. Rathi, for the workman.

Shri S. K. Gulati, for the manage-
ment.

AWARD

By order No. ID/RK/432-B-76/43410, dated 23rd November, 1976, the Governor of Haryana referred the following dispute between the management of M/s. Dharampal Chadda and Sons, G.T. Road, Bahalgarh (Sonapat) and its workman Shri Charanpal Singh to this Court, for adjudication, in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947:—

Whether the termination of services of Shri Charanpal Singh was justified and in order? If not to what relief is he entitled?

The parties put in their appearance in this court in response to the usual

notices of reference sent to them and filed their pleadings. The workman alleged,—*vide* claim statement filed by him that the management concerned illegally terminated his services on 31st August, 1976 as a result of a demand made by him of payment of minimum wages and that he was entitled to reinstatement with continuity of service and full back wages.

The management concerned denied the allegations of the workman that they terminated his services and pleaded that he absented himself from duty, with effect from 31st August, 1976 without their permission or sanction of leave and himself abandoned his job in that manner and the reference made under section 2(a) of the Industrial Disputes Act was thus bad in law.

The workman reiterated the allegations made by him in the claim statement and controverted the pleas of the management,—*vide* rejoinder filed by him with the result that the following issues were framed,—*vide* order, dated 18th April, 1977 and 9th November, 1977 :—

- (1) Whether the workman abandoned his job voluntarily by absenting himself from duty without leave or permission of the management ?
- (1-A) Whether the services of the workman concerned were terminated by the management ?
- (2) If yes, whether the termination of services of Shri Charanpal Singh was justified and in order ? If not to what relief is he entitled ?

I have heard learned authorised representatives of the parties with reference to the evidence led by them and seen the records I decide the issues as under :—

ISSUE No. 1 and 1-A:

These issues being inter-connected shall be disposed of and decided by me

together. I am called upon to find under these issues as to whether the workman himself abandoned his job by way of absenting himself from duty without permission of the management; with effect from 31st August, 1976 or the later terminated his services, with effect from that date.

The workman concerned appeared as his own witness and fully supported his case while deposing that he joined the services of the management concerned as a turner on 29th October, 1969 and continued to serve them till 31st August, 1976 when they abruptly terminated his services without holding any enquiry and that he served the management with the notice of demand, Exhibit W-1, dated 3rd September, 1976 immediately, thereafter. He admitted having received letters, dated 8th September, 1976, Exhibit W-3, 10th November, 1976, Exhibit W-4 and 27th November, 1976, Exhibit W-5 from the management asking him to report for duty and showing him absent from duty willfully with effect from 31st August, 1976 and explained that the averments in all these letters were false and that he finally sent letter, dated 19th December, 1976, copy Exhibit W-6 to the management denying their allegations of his willful absence from duty with effect from 31st August, 1976 and suggesting that this plea was false and had been put forth only to deprive him from legal rights of reinstatement with continuity of service and full back wages. Shri Vijay Kumar Chadda examined as MW-1 admitted the receipt of letter, Exhibit W-6 while giving out in examination in chief that the management never terminated his services and that he willfully absented from duty with effect from 31st August, 1976 and continued to do so thereafter.

It would appear that each party deposed in his own favour and I am under the circumstances left with only circumstantial evidence for deciding the controversy between the parties. The management admittedly received the notice of demand copy, Exhibit W-1, dated 3rd September, 1976 on 7th September,

1976 and took an opportunity for the first time on 8th September, 1976,—vide letter, Exhibit W-3 sent by them to the workman concerned that he absented himself from duty, with effect from 31st August, 1976 without mentioning the receipt of the notice of demand by them and without denying that they terminated his services. The admitted omission in this letter by the management to make reference to the notice of demand, dated 3rd September, 1976 of the workman claiming his reinstatement with continuity of service and full back wages on the ground of illegal termination of his services, with effect from 31st August, 1976 speaks volumes against them. Their failure to deny the allegations of the workman directly at the earliest stage is thus in my opinion a circumstance leading to a conclusion that they thought of putting the plea of his wilful absence on 8th September, 1976 after the receipt of the notice of demand. Exhibit W-1 on 7th September, 1976, only in order to meet his case.

Even otherwise it seems to be unnatural in the ordinary circumstances of the case and in absence of any suggestion on behalf of the management, that he took up another better job or gainfully employed himself somewhere else that the workman would himself abandon his job of seven years tenure without any reason by way of absenting himself from duty, with effect from 31st August, 1976.

It is significant to note that the management failed to bring on record their attendance register or a copy, thereof showing absence of the workman concerned, with effect from 31st August, 1976 and the best evidence having thus been withheld by them, this circumstance led to a presumption that if brought such evidence would have not supported their plea of wilful absence of the workman from duty.

I, therefore, in view of all the facts and circumstances of the case, stated above am of the considered opinion that the management abruptly terminated the

services of the workman concerned, with effect from 31st August, 1976 and that he did not abandon his job by way of wilful absence from duty, with effect from that date and that the management put forth the plea of his absence from duty falsely in order to meet the demand raised by him for his reinstatement with continuity of service and full back wages. I am further satisfied that the management offered him the job,—vide letters W-3 W-4 and W-5 without payment of back wages fully knowing that he would decline to accept the same if his back wages were not paid. I, therefore, decide issue No. 1 against the management and issue No. 1-A in favour of the workman. **ISSUE No. 2:**

In view of my findings on issue No. 1 and 1-A and in absence of any plea of the management justifying the termination of services of the workman concerned, I hold that that the termination of his services by the management was unjustified and not in order and he is entitled to reinstatement with continuity of service and full back wages. I, decide this issue accordingly and answer the reference while returning the award in these terms.

Dated the 13th June, 1978.

MOHAN LAL JAIN,

Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 1631, dated 20th June, 1978.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

MOHAN LAL JAIN,

Presiding Officer,
Labour Court, Haryana,
Rohtak.